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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~350~~ 82.

HOME SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 22, 1905.

(19,852.)

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1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Home Savings Bank, appellant, and The City of Des Moines and The City Council of said City as a Board of Review, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
2 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of July, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme
Court of the United States.

3 UNITED STATES OF AMERICA, *ss:*

To the City of Des Moines and the City Council of said City as a Board of Review, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Iowa wherein Home Savings Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this tenth day of July, in the year of our Lord one thousand nine hundred and five.

DAVID J. BREWER,
Associate Justice of the Supreme Court
of the United States.

Due and legal service hereof, and receipt of copy is hereby admitted and accepted, at Des Moines, Iowa, this July, 13, A. D. 1905.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
Att'ys for All Defendants in Error.

4 In the Supreme Court of the United States.

HOME SAVINGS BANK, an Iowa Corporation, Plaintiff in Error, *vs.* THE CITY OF DES MOINES and THE CITY Council of said City as a Board of Review, Defendants in Error.	Petition for Writ of Error to the Supreme Court of Iowa.

To one of the honorable associate justices of the Supreme Court of the United States:

Comes now, the Home Savings Bank, a corporation duly organized under the laws of the State of Iowa, for the transaction of a banking business, with its principal place of business at Des Moines, in said State, and respectfully shows:

That an assessment for taxation of the property belonging to plaintiff in error in the sum of $29,486.00 was made on or about the 9th, day of April, 1902, by the duly elected and qualified assessor of said city of Des Moines, in the State of Iowa, and thereafter, on or about the 22d. day of April, 1902, said assessor increased said as-

sessment of the property of the plaintiff in error by the sum of $32,253.00, making an aggregate assessment upon the property belonging to plaintiff in error in the sum of $61,739.00. That said increase of $32,253.00 in said assessment, was based upon the ownership by plaintiff in error of $32,253.00 of bonds issued by the United States pursuant to the war revenue act of Congress approved June 13, 1898 (30 Stat. L. 448), known as the 3 per cent. war issue of 1898. The capital stock of plaintiff in error actually invested in said war bonds was the sum of $32,675.00.

5 Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed to the city council of said city of Des Moines, sitting as a board of review or of equalization, and thereafter on the 29th. day of April, 1902, said board refused to annul said increase of assessment for taxation whether regarded as based upon the capital of the bank or upon the shares of its own capital stock, and approved and confirmed said assessment.

Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed from the final decision of said board of review to the district court of the State of Iowa, in and for Polk county, where said cause was tried to the court, on its merits as an equity cause, without special assignments of error and was duly submitted in said district court, and was decided on the 23d. day of November, 1903. On the same day, final decree was entered of record in said district court, dismissing this plaintiff in error's said appeal, and rendering judgment against this plaintiff in error for the costs of said appeal, all of which was then and there duly excepted to by this plaintiff in error.

Thereafter, in accordance with the laws of the State of Iowa, plaintiff in error appealed from said final decree of the district court to the supreme court of Iowa, that being the highest court at law or in equity in the State of Iowa, in which a decision could be had in said cause. That said cause was triable *de novo*, in equity in said supreme court, without assignments of error, and was submitted upon a printed abstract of record, which contained all pleadings and papers filed, all proceedings had and done, all evidence offered, introduced or used on the trial, and all rulings and orders made upon the trial of said cause in said district court, together with the final judgment and decree rendered and entered of record in said district court. Said abstract of record contained the whole of the record upon which said appeal was submitted in the supreme court of Iowa.

6 Thereafter, after argument of counsel for both parties, said cause was submitted to the supreme court of Iowa on the 22d. day of November, 1904, and thereafter, on the 17th day of December, 1904, the supreme court of Iowa, rendered its decision, affirming the judgment of the lower court, (101 N. W. (Iowa) 867), and in pursuance of said decision, on the 17th. day of December, 1904, final judgment was rendered and entered of record in said supreme court of Iowa in favor of the parties herein above named as defend-

ants in error, and against this plaintiff in error, affirming the judgment below and also against this plaintiff in error for costs.

That the questions submitted to the supreme court of Iowa for decision and decided against plaintiff in error by that court, were (1) whether under section 8 of article 1 (clauses 1, 2, 11, 12, 13, 16 and 18) of the Constitution of the United States, and section 1 of article XIV of the amendments thereto, and under the laws and statutes of the United States, the capital owned by plaintiff in error and invested in said 3 per cent. war bonds of 1898, issued by the United States, pursuant to the act of Congress, approved on the 13th. day of June, 1898, (30 Stat. L. 448) is subject to assessment and taxation under the laws of the State of Iowa; (2) or whether the shares of its own capital stock can, under the said provisions of the Constitution and laws of the United States be legally taxed to and against this plaintiff in error, notwithstanding the provisions of the statutes of Iowa.

That the judgment so rendered by the supreme court of Iowa, was unwarranted in law, as plaintiff in error is advised.

Plaintiff in error presents herewith a bond in proper form and an assignment of errors, and prays that a writ of error be allowed so as to have a review in the Supreme Court of the United States of said decision and judgment of said supreme court of Iowa; that a citation issue in due form and course, requiring each of the defendants in error above named to appear to said writ of error, and show
7 cause why said judgment of the supreme court of Iowa should not be corrected as provided by law and the rules of this court.

HORATIO F. DALE,
WM. G. HARVISON,
Attorneys for Plaintiff in Error.

STATE OF IOWA, }
Polk County, } ss:

W. G. Harvison, being first duly sworn on oath deposes and says that he was one of the attorneys for plaintiff in error, Home Savings Bank, throughout the proceedings above set out before the board of review, on the appeal therefrom to and before the district court of the State of Iowa, and on the appeal therefrom to and before the supreme court of the State of Iowa; that he has personal knowledge of the contents of the foregoing petition for writ of error, and that the matters and things therein set forth are true as he verily believes.

W. G. HARVISON.

Subscribed in my presence and sworn to before me by the said W. G. Harvison at Des Moines, Iowa, this 7th day of February, 1905.

[Notarial Seal of J. B. Sullivan, Iowa.]

J. B. SULLIVAN,
Notary Public, Polk County, Iowa.

Writ of error allowed this 10th day of July, 1905.

DAVID J. BREWER,
Associate Justice, Supreme Court of United States.

8 [Endorsed:] In the Supreme Court of the United States. Home Savings Bank, plaintiff in error, *vs.* The City of Des Moines *et al.*, defendants in error. Petition for writ of error to the supreme court of Iowa.

9 Bond.

U. S. Circuit Court, Southern District of Iowa.

I hereby certify that the sureties on the annexed bond and the bond itself would be approved by me if the same were presented to me for my approval.

Witness my hand and the seal of said circuit court at Des Moines, Iowa, this 21st day of June, 1905.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk U.S. Circuit Court, Southern District of Iowa,
By MAZE VERNON, Deputy.

Know all men by these presents, that we, Home Savings Bank, an Iowa corporation, as principal, and H. H. Taylor, S. B. Garton and H. C. Hansen, as sureties, are held and firmly bound unto the City of Des Moines, and the City Council of said City as a Board of Review in the full and just sum of five hundred (500) dollars, to be paid to the said City of Des Moines, and the City Council of said City as a Board of Review, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of February, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the supreme court of the State of Iowa, in a suit depending in said court, between Home Savings Bank, appellant, and The City of Des Moines, and The City Council of said City as a Board of Review, appellee-, a final judgment was rendered against the said Home Savings Bank, appellant, and the said Home Savings Bank having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Des Moines, and The City Council of said City as a Board of Review citing and admonishing each of them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said

Home Savings Bank shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

HOME SAVINGS BANK,
By A. C. MILLER, Cashier.
H. H. TAYLOR. [SEAL.]
S. B. GARTON. [SEAL.]
H. C. HANSEN. [SEAL.]

Sealed and delivered in presence of—
Witness:
H. F. DALE.

Witness:
ARTHUR REYNOLDS, N.
A. C. MILLER.
EDWIN L. BOWEN.

Approved by—
DAVID J. BREWER,
Associate Justice of the Supreme
Court of the United States.
July 10, 1905.

10 In the Supreme Court of the United States.

HOME SAVINGS BANK, an Iowa Corporation, Plaintiff in Error, *vs.* CITY OF DES MOINES and THE City Council of said City as a Board of Review, Defendants in Error.	Error to Supreme Court of Iowa.

Assignment of Errors.

Comes now plaintiff in error, Home Savings Bank, and avers that the judgment rendered by the supreme court of Iowa against plaintiff in error, in the above entitled cause, on the 17th. day of December, 1904, is erroneous and against the rights of plaintiff in error; and, as and for its assignments of error upon which it relies for a review and reversal of said judgment, plaintiff in error respectfully shows the court: that there is manifest error upon the face of the record in said judgment of the supreme court of Iowa, and in the record and proceedings in said cause, in the following respects, to-wit:

First. The supreme court of Iowa erred in rendering judgment confirming the assessment for taxation made against plaintiff in

error, whatever construction may be placed upon section 1322 of the Code of Iowa of 1897 for the following reasons:

a. The assessment complained of should have been annulled, if Code section 1322 is construed to authorize the assessment for taxation against plaintiff in error, as owner, of the shares of stock issued by it which it did not own, but which were owned by the individual stockholders, such judgment being in violation of section one (1) of article XIV of the amendments to the Constitution of the United States, concerning due process of law, and equal protection of the law.

11 *b.* The assessment complained of should have been annulled or reduced by the sum of $32,675, if Code section 1322 is construed to authorize the assessment for taxation against plaintiff, as owner, of the shares of stock of said savings bank, in the sense that it included its capital, because said capital to the extent of $32,675.00 had been used to purchase three per cent. war bonds, issued under section 33 of the act of Congress approved June 13, 1898, (30 St. L. 448; 2 Supp. Rev. St. U. S. pages 779 to 804), which were then owned by plaintiff in error, and were exempt from taxation, in any form, under the war revenue act of 1898, above referred to.

By said judgment plaintiff in error has been deprived of a title, right, privilege or exemption, secured to it by the Constitution and statutes of the United States.

Second. Section 1322 of the Code of Iowa of 1897, if it is construed to authorize the assessment for taxation, against savings banks, of the shares of capital stock duly issued by said savings banks and owned by the individual stockholders, without regard to net earnings or dividends declared and without the right of recoupment by said bank from the individual stockholders, out of dividends declared or otherwise, for taxes so paid, then said Code section 1322 is, to that extent, in violation of that part of the 14th. amendment (U. S. Const. art. XIV—sec. 1), which provides that property shall not be taken without due process of law and secures to all persons equal protection of the laws; and by the judgment of the supreme court of Iowa complained of, plaintiff in error is compelled to pay taxes, as the owner of property which it does not own, but which is owned by other and different persons; and for these reasons said judgment is unconstitutional and void, and thereby plaintiff in error has been deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

12 Third. Section 1322, of the Code of Iowa of 1897, requires shares of stock in savings banks, of which plaintiff in error is one, to be assessed to such banks, notwithstanding that said banks are not the owners thereof. But chapter 1 of title VII of said Code of Iowa, including section 1312 thereof, requires property to be listed, for taxation, by the owner or the person who has the control or management thereof; and sections 1322 and 1323 of said Code of Iowa require shares of stock of all corporations, except those of State

and savings banks and of loan & trust companies, to be assessed for taxation to the "individual stockholders" or to the "owners thereof," while under section 1322 of said Code of Iowa, shares of stock of savings banks, the property of the individual stockholders, are required to be assessed to such savings banks, who are not the owners thereof.

The provisions of said section 1322 of said Code of Iowa, requiring the assessment for taxation, to savings banks, of shares of stock issued by said savings banks, but not owned by or under the control or management of said savings banks, are in contravention of each of the provisions of section one (1) of article XIV of the amendments to the Constitution of the United States concerning due process of law and equal protection of the laws, and are unconstitutional and void; and the judgment of the supreme court of Iowa, sustaining said provisions of the Code of Iowa, has deprived plaintiff in error of a title, right, privilege or exemption, to which it is entitled under the Constitution of the United States.

Fourth. Section 1325, of the Code of Iowa of 1897, makes all corporations liable for the payment of taxes assessed upon shares of stock, whenever such shares of stock are assessed to the "individual stockholders" or to the "owners thereof" under the provisions of sections 1322 and 1323 of said Code of Iowa, and further gives to said corporations paying said taxes, a right of proportionate recoupment from each individual stockholder for the taxes so paid,
13 and establishes the amount so paid as a lien upon the stock and upon the unpaid dividends belonging to such stockholder; but this right of recoupment is limited, by the express terms of said section 1325 to payments made by corporations in discharge only of "taxes assessed to the stockholders of such corporations," and does not apply to savings banks, of which plaintiff in error is one.

The provisions of section 1322 of said Code of Iowa, requiring plaintiff in error to be assessed with and to pay taxes upon shares of stock owned by the individual stockholders, without any right of recoupment to plaintiff in error from the owner of said stock, and without regard to whether there are any dividends belonging to the owner of said shares of stock available for payment of taxes, or to the effect of such payment by said savings banks in impairing its capital, are in contravention of each of the provisions of section one (1) of article XIV of the amendments to the Constitution of the United States, concerning due process of law and equal protection of the laws, and are unconstitutional and void, and the judgment of the supreme court of Iowa, sustaining said provisions of the Code of Iowa, has deprived this plaintiff in error of a title, right, privilege or exemption to which it is entitled under the Constitution of the United States.

Fifth. The act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898 (30 St. L. 448; 2 Supp. Rev. St. U. S. 779 to 804), com-

monly referred to as the war revenue act of 1898, in section 33 thereof, provides for the issue of three (3) per cent. war bonds, and further provides that "the bonds herein authorized shall be exempt from all taxes or duties of the United States, *as well as from taxation in any form by or under State municipal or local authority*," and the judgment of the supreme court of Iowa against plaintiff in error, now before this court, has improperly and unlawfully deprived plaintiff in
14 error of the exemption from taxation of such of the war bonds above described, in the sum of $32,675.00 as were then owned by plaintiff in error and were subjected to assessment for taxation by the assessor of said city of Des Moines, and by the action of the board of review, and by the judgments severally rendered by the district and supreme courts of the State of Iowa, confirming said assessment for taxation of plaintiff in error's said war bonds of 1898. That plaintiff in error was thereby deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Sixth. The object of the immunity from taxation of the 3 per cent. war bonds of 1898, issued under the act of Congress, of June 13, 1898, above mentioned, was to induce the investment of capital in said war bonds of 1898, in order to obtain the sinews of war for the use, necessities and benefit of the Government of the United States, and the assessment and taxation of the capital of plaintiff in error invested in such war bonds in the sum of $32,675.00 is a mere evasion of the statutory prohibition contained in said act of Congress against taxing such bonds "in any form," and is, in its effect, an indirect taxation, in one form, of the bonds purchased with that part of the paid up capital of plaintiff in error, and is taxation upon and direct obstruction to the fiscal operations of the Government of the United States, in violation of the true intent of said statute; and has deprived plaintiff in error of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Seventh. Upon the investment of money by plaintiff in error in the three per cent. war bonds of 1898, above mentioned, in the sum of $32,675.00, plaintiff in error ceased to be the owner of said money as capital or otherwise, the title to said money having passed to the United States, and it could not lawfully be taxed upon said money which it did not own. Plaintiff thereupon became the owner of the war bonds so purchased, upon which plaintiff in error
15 could not lawfully be taxed in any form, as capital or otherwise, such taxation being prohibited by the war revenue act of 1898. The judgment of the supreme court of Iowa, confirming the assessment for taxation in question, was in violation of the Constitution and statutes of the United States, and deprived plaintiff in error of a title, right, privilege or exemption to which it was entitled under said Constitution and statutes.

Eighth. Section 1322 of the Code of Iowa of 1897, is and was in violation of section 8 of article 1 of the Constitution of the United

States, and especially clause 2 thereof which provides that: "That Congress shall have power * * * to borrow money on the credit of the United States," (1 U. S. Comp. Stats., 1901, page LXVIII), if said section 1322 is construed to authorize the taxation, as shares of stock, of the capital of savings banks, of which plaintiff in error is one, including that part of its capital invested in the three per cent. war bonds of 1898, above mentioned, and to that extent, said Code section 1322, attempts to authorize an illegal tax upon the powers and functions of Congress and of the Federal Government, and places a direct hindrance upon and obstruction to the proper exercise of such functions by the United States, and is unconstitutional and void; and as a result thereof, plaintiff in error has been deprived of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Ninth. The statutes of the State of Iowa, which, through the exercise of its assessing and taxing power, authorize an assessment for purpose of taxation upon shares of stock, thereby meaning the capital owned by plaintiff in error, which had been invested in the three per cent. war bonds of 1898, above described, is in violation of section 1 of article XIV of the amendments to the Constitution of the United States, commonly referred to as the fourteenth amendment, which provides: "Nor shall any State deprive any
16 person of * * * property, without due process of law," in that the collection of said tax is a taking of property belonging to plaintiff in error without authority of law, and in violation of the Constitution and statutes of the United States, and deprives plaintiff in error of the exemption of such war bonds from taxation, to which it is, by law, entitled; whereby plaintiff in error has been deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Tenth. The statutes of the State of Iowa, which, through the exercise of its assessing and taxing powers, authorize an assessment for taxation upon the shares of stock, thereby meaning that part of its capital invested by plaintiff in error in the three per cent. war bonds of 1898, above mentioned, is in violation of section 1 of article XIV of the amendments to the Constitution of the United States, commonly known as the fourteenth amendment, which provides: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws," in that section 1322 of the Code of Iowa of 1897, in fixing the value of the shares of stock of savings banks, of which plaintiff in error is one, required the assessor to take into consideration for assessment purposes of taxation the capital of said savings banks, without deducting war bonds of 1898 purchased with said capital, which bonds by act of Congress are exempt from taxation, while under section 1321 of said Code of Iowa, in ascertaining the capital of private bankers, which is subject to taxation, the assessor is required to take into consideration "the aggregate actual value of bonds and stocks, after deducting the portion thereof exempt, or otherwise taxed in this State," whereby plaintiff in error has been

deprived of a title, right, privilege or exemption to which it is entitled under the Constitution and statutes of the United States.

Eleventh. If the true intent and meaning of section 1322 of the Code of Iowa of 1897, is and was to authorize the taxation of the capital owned by savings banks, of which plaintiff in error is
17 one, including that part of its capital invested in the three per cent. war bonds of 1898, above mentioned, then that part of section 1322 of the Code of Iowa, which authorizes an assessment for taxation upon that part of its capital so invested in said war bonds, is and was in direct violation of the provisions of the war revenue act of 1898, exempting such bonds from taxation "in any form" and is void; and thereby plaintiff in error was deprived of a title, right, privilege or exemption secured to it by the Constitution and statutes of the United States.

Wherefore, plaintiff in error prays that said order and final judgment of said supreme court of Iowa be reversed, with costs of suit.

February 16, 1905.

HORATIO F. DALE,
WM. G. HARVISON,
Attorneys for Plaintiff in Error.

18 [Endorsed:] In the Supreme Court of the United States. Home Savings Bank, plaintiff in error, *vs.* City of Des Moines *et al.*, defendants in error. Assignment of errors.

19 Transcript of the Record.

In the Supreme Court of Iowa.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL of said City, Appellees. } No. 23593. In Equity.

20 Supreme Court of Iowa.

Pleas and proceeding in the supreme court of Iowa, at the September, A. D. 1904, term of said court, begun and held at the State capitol, in the city of Des Moines, of the State of Iowa, before said supreme court duly convened.

Be it remembered that heretofore, to-wit: on the 8th. day of April, A. D. 1904, there was filed in the office of the clerk of the supreme court of Iowa, a printed abstract of record, in words and figures as follows, to-wit:

21 Due and legal service of this abstract is hereby accepted at Des Moines, Iowa, this — day of April, 1904.

——, ——,
Attorneys for Appellees.

In the Supreme Court of Iowa, May Term, 1904.

HOME SAVINGS BANK, Appellant,
vs.
THE CITY OF DES MOINES, IOWA; J. M. BRENTON, Mayor, and W. H. Brereton, Chairman of Board of Review, *et al.*, Appellees. } In Equity.

Appeal from Polk District Court.

Hon. James A. Howe, judge.
Dale & Harvison, attorneys for appellant.
W. H. Bremner, M. H. Cohen and R. B. Alberson, attorneys for appellees.

Appellant's Abstract.

22 Appellant's Abstract.

On May 2, 1902, appellant filed the following

Petition.

Par. 1. The plaintiff states: That it is a corporation organized under and by virtue of the laws of Iowa, and is, and for a long time past has been engaged in a general savings bank business at the city of Des Moines in said State.

Par. 2. Plaintiff further states: That on or about April 9th, 1902, it was assessed by the assessor with monies and credits in the sum of $29,486.00; that thereafter, and on or about April 22d, 1902, said assessor increased the assessment theretofore made by him to the sum of $61,739.00; that said increased assessment of $32,253.00 was and is based upon certain United States Government bonds, the same being of the war issue of 1898, and bearing three per cent. interest; that said bonds were in good faith owned and held by plaintiff on the 1st day of January, 1902; its capital stock to the extent of $32,675.00 being invested therein.

Par. 3. And plaintiff further states: That thereafter, and on the 24th day of April, 1902, it appeared before the individual defendants mentioned herein, the same sitting as a board of review, or board of equalization for the purpose of correcting erroneous assessments as between individuals, the same being then in session as such, and filed with said board of review his complaint in writing whereby he claimed that said increased assessment, being based upon said Government bonds, was illegal and void for that said Government bonds are and were not subject to taxation; and requested that the action of the assessor with respect thereto be annulled, all of which will more fully and at length appear from reference to said complaint, a

copy thereof being hereto attached, marked Exhibit "A" and made a part hereof; that said board of review refused to set aside the action of the assessor complained of, but approved the same, and thereafter, and on or about April 29th, 1902, adjourned *sine die*.

23 Par. 4. And plaintiff further states: That thereafter, and within the time allowed by law, it duly appealed from said action of said board of review to this court, serving notice thereof in the manner and form required by the statute.

Par. 5. And plaintiff further states: That the action of the assessor in returning said Government bonds for taxation, and the action of the board of equalization, or board of review, in approving said action of the assessor are illegal and void for that said bonds are not subject to taxation, but the same are expressly exempted therefrom.

Wherefore, the plaintiff prays that the action of the assessor in returning said bonds for taxation, and the action of said board of review, in approving said action of the assessor be cancelled, set aside and held for naught; that its assessment of monies and credits made as aforesaid be reduced by striking therefrom so much thereof as is based upon said Government bonds; and plaintiff prays for all such other, further and different relief as to equity may pertain, and in as in duty bound it will ever pray, etc.

Exhibit "A," attached to the petition is as follows:

Before the Honorable City Council of the City of Des Moines, Iowa Sitting as a Board of Review.

In re Assessment of the HOME SAVINGS BANK. Complaint.

To the honorable city council above named:

Your complainant, The Home Savings Bank of Des Moines, Iowa, respectfully represents unto this honorable body that it is a savings bank, organized under the law of Iowa, and is engaged in business as such; that on or about April 9, 1902, it was assessed by the assessor with money and credits in the sum of $29,486.00, as will more fully and at length appear from reference to assessment stub No. 6572; that thereafter, and on April 22, 1902, said assessor increased the assessment theretofore made by him to the sum of $61,739.00 as will more fully and at length appear from reference to assessment stub No. 5996.

24 Your complainant further represents that said increased assessment of $32,253.00, was and is based upon certain United States Government bonds, the same being of the war issue of 1898 and bearing 3 per cent. interest; that said bonds were in good faith owned and held by your complainant on the 1st day of January, 1902, its capital stock to the extent of $32,675.00 being invested therein.

And your complainant further respectfully represents that the action of the assessor in increasing the assessment of your complain-

ant as above stated is based entirely upon the fact that the said Government bonds were not included in the original assessment and are now sought to be included in the amended assessment; that the action of the assessor in making said additional assessment is unwarranted, illegal and void, for that the capital stock of your complainant to the extent that same is invested in said bonds is not subject to taxation.

Wherefore your complainant prays that the action of the assessor in making said additional assessment be set aside, cancelled and held for naught, and that the original assessment of $29,486.00 be reinstated; and your complainant prays for all such other, further and different relief as to this honorable board may seem meet in the premises, and as in duty bound it will ever pray, etc.

And thereafter, and on October 20, 1903, the appellants filed the following

Amendment to Petition.

Comes now plaintiff, and by leave of court first had and obtained and for amendment to its petition, respectfully states:

Par. 1. That the assessment first made by the assessor, and based upon moneys and credits, as stated in paragraph 2 of the original petition, is illegal and void for that a savings bank organized under the laws of Iowa is not assessable upon moneys and credits held by such bank.

Par. 2. The assessment based upon corporation stock, being the second assessment mentioned in said paragraph of the original petition, is illegal and void for that the plaintiff was not the owner of corporation stock on the first day of January, 1902, or at any other time covered by said assessment; and for the further reason that an assessment upon corporation stock against a savings bank is not warranted under the law of the State of Iowa.

Par. 3. Plaintiff further respectfully states: That an assessment against it, based upon its shares of capital stock, without deducting from the value thereof the Government bonds held by it on January 1, 1902, is illegal and void for that:

a. The plaintiff bank was not the owner of the shares of its own capital stock, but the same was owned by its stockholders, and an assessment of the same to the plaintiff bank is an assessment to it of property not owned by it.

b. Such assessment upon its shares of stock is illegal and void because in contravention of the statutes of the United States and of the provisions of section 8 of article 1 of the Constitution of the United States.

c. Such assessment amounts to the taking of property of the individual without due process of law in controvention of the provisions of section 1 of article XIV of the Constitution of the United States.

Wherefore, the plaintiff prays as in its original petition.

Preservation of Evidence.

On October 13, 1903, this cause came on for trial before the Hon. James A. Howe, judge of said court. On said trial the official shorthand reporter of the court, under the order of the court, duly reported in shorthand all of the evidence offered, and all the proceedings had on the trial, and his said report in shorthand was duly certified by the reporter and by the trial judge; and thereupon, and immediately at the close of said trial, on to wit: October 20, 1903, was duly filed with the clerk. Thereafter and on the 20th day of January, 1904, the translation of said report into longhand,
26 also duly certified, was filed with the clerk. All rulings and orders made adversely affecting the appellant were by it duly excepted to at the time.

Plaintiff's Testimony.

A. C. MILLER, for plaintiff, testified: Am now and have been cashier of the plaintiff since it was organized in 1891. The first step with reference to the assessment for 1902, was the receipt of a blank from the assessor calling for a sworn statement of the condition of the bank on January 1, 1902. In response thereto I made such sworn statement to the assessor, the same being Exhibit "1," now handed me. It shows a total of $65,595.00 of property subject to taxation not making any deductions or allowances. It shows also a claim made by the bank of deduction therefrom of United States Government bonds to the extent of $32,675.00; also the claim for reduction of real estate held by the bank and leaving a net total of $29,065.17 subject to taxation, including $10,000 surplus.

Soon after that we received from the assessor the first assessment notice, the same being Exhibit "2," now handed me. It is dated April 9, 1902, being No. 6572, and shows an assessment against the bank of moneys and credits in the sum of $39,486.33.

A little later we received a second assessment notice, being Exhibit "3," now shown me. Exhibit "3" is the assessment roll for 1902, No. 5996, marked second notice, and assesses the bank on corporation stock in the sum of $61,739.00. Up to the receipt of Exhibit "3" we had no personal communication with the assessor or any of his deputies.

On January 1, 1902, the Home Savings Bank owned corporation stock of the Valley national bank in the sum of $250.00. It owned no other corporation stock.

27 After we received Exhibit "3," I appeared before the board of review of the city of Des Moines in person and "kicked" on the assessment on the ground that our Government bonds were not taxable; and I asked the board of review to exempt them from taxation. They refused to change the assessment. I then went to our attorney and a written protest was prepared and filed with the board of review.

Cross-examination:

I did not appear before the board of review until after receiving the second notice which raised the assessment. I would have appeared to correct the $10,000 error in Exhibit "2" even if the assessment had not been raised.

Mr. BREMNER: It is conceded that the amount stated in Exhibit 2 as $39,486.00 should have been stated and was intended to be stated by the assessor as $29,486.00, and the same is true of the books to which that amount has been carried.

Plaintiff offers in evidence Exhibit "1," being the statement furnished the assessor; also Exhibit "2," being the first assessment; also Exhibit "3," being the second assessment.

Plaintiff also offers in evidence the assessor's book of the fourth assessorial district of the city of Des Moines for 1902, showing upon line 24 on double page 102 that it is assessment roll No. 6572, assessing the Home Savings Bank under the head of "moneys and credits" with the sum of $58,783.00, the taxable valuation of same being $14,696.00.

Plaintiff also offers in evidence from the tax list of the same district for the year 1902, the first line of page 319, showing an assessment against the Home Savings Bank under the head of taxable value of personal property in the sum of $14,700.00.

28 Plaintiff also offers in evidence Exhibit 4, the same being the protest filed with the board of review April 24, 1902, as shown by the file mark of the city clerk, which file mark is also offered in evidence. (Exhibit 4 is identical with Exhibit "A," of the petition.)

Plaintiff also offers in evidence the report of the committee of the board of review, endorsed on said protest as follows: "We recommend that the assessment stand approved. A. L. Smith, E. Van Dyck."

Plaintiff also offers in evidence roll call No. 329 of the board of review as follows: "Be it resolved by the city council of the city of Des Moines that the report of the committee and the assessment against the Home Savings Bank stand approved as made by the assessor." Said roll call shows seven votes in favor of such adoption and none against it.

Mr. HARVISON: I suppose there is no question but that the protest was properly filed and was refused before the board of review.

Mr. BREMNER: We admit that the protest was filed and the assessment was approved as made by the assessor which would amount to the protest being refused or overruled.

Plaintiff offers in evidence Exhibit "5," the original notice of appeal in this case, together with the return of service thereon, showing that the same was received by the sheriff of this county and served by him personally on W. H. Brereton, chairman of the board of review, on the 3d day of May, 1903.

Mr. BREMNER: It is conceded that W. H. Brereton named in the

return of the sheriff on Exhibit "5" was the chairman of the board of review of the defendant city for 1902, and that the notice of appeal was served within the time allowed by law; also that the board of review of the defendant city adjourned *sine die* April 29, 1902.

29 Plaintiff also offers in evidence from the report of the code commission at the close of the second paragraph on the first page the following:

"In the exercise of the duty of rewriting the law and improving "its phraseology, the code commission have made many verbal "changes but *has* done so with great care in order that the meaning "of the statutes should not be thereby materially changed."

Plaintiff also offers in evidence from the bottom of page 3 of said report the following: "It must be distinctly understood that a "change of language does not necessarily indicate any intention to "change the meaning of the law."

Plaintiff also offers in evidence from said report on page 48, section 20 thereof as follows:

"SECTION 20. National, State and savings banks, and loan and "trust companies should be taxed on the same basis as private banks, "except that the tax should be paid by the stockholders. At pres- "ent natio-al and State banks are taxed by means of taxation on "the stock. Code, sec. 818; McClain's Code, sec. 1297. Twenty-third "General Assembly, chap. 39. There seems to be no reason why "savings banks should not be taxed in the same manner."

Plaintiff also offers in evidence section 20 of the Code of Iowa as reported by the code commission, found at the top of page 251 thereof.

Testimony closed.

Motion for Decree.

Mr. HARVISON: Plaintiff now moves for a decree in its favor for that:

30 First. Any assessment of moneys and credits against a savings bank is unwarranted under the laws of this State and void.

Second. The assessment of corporation stock against a savings bank is unwarranted under the laws of this State.

Third. That if it shall be found that the assessment complained of is against the capital stock of the plaintiff bank, then, and in that case, the amount of its capital invested in Government bonds, as shown by Exhibit 1, should have been deducted from such assessment.

Fourth. If it shall be found that the assessment complained of is upon the shares of stock of the plaintiff corporation, then such assessment, and the law seeming to warrant the same, is illegal and void, for that.

1st. If the tax shall be regarded as levied against and paid by

the bank, then the bank is compelled to pay the debt of another person.

2d. If the tax shall be reregarded as levied upon the property of the shareholders and paid by them, then and in that case, the shareholder is deprived of the right to offset his indebtedness, granted him under the general laws of the State.

Mr. HARVISON: It is conceded in open court that the plaintiff, The Home Savings Bank, owned and held on January 1st, 1902, Government bonds of the United States of America in the sum of $32,675.00, and that its capital stock to that extent was invested therein.

Mr. BREMNER: The defendant concedes this to be true, but objects to the admission as incompetent, irrelevant and immaterial.

The foregoing motion was taken under advisement by the court.

Defendants' Testimony.

Thereupon the defendants, upon leave of coure, offered the following testimony on their own behalf:

31 JACOB J. BECK, for defendants, testified:

I was deputy assessor of the city of Des Moines under Assessor French during his term of four years ending January 1, 1903. I made the assessment shown in the assessment roll No. 5996 (Exhibit 3), assessing the Home savings bank with corporation stock in the sum of $61,739.00.

Q. What does the amount $61,739.00 corporation stock represent?

Objected to as incompetent, irrelevant and immaterial and seeking to contradict the written report of the assessor made at the time.

A. The value of the shares of the capital stock of the Home savings bank as near as I could get it from the statement furnished the assessor's office by the bank.

Cross-examination:

I had been discharging the duties of assessor as deputy three or four years prior to making the assessment shown in Exhibit "4," and just mentioned by me. Mr. French was the assessor in 1902 and I was his deputy. Exhibit "2" the first assessment was signed by Mr. French himself. I received my instructions from him and never went contrary to his instructions in making an assessment. Exhibit "3" the second assessment, is in my hand writing. In making that second assessment I knew there had been an assessment of the bank previously made for the same year by the assessor himself. I concluded the first assessment was wrong and corrected the assessment. The first assessment was wrong because it was made on a valuation of the moneys and credits owned by the bank after deducting the Government bonds therefrom, the same as had been

done in prior years. We did deduct Government bonds from
32 the assessment of savings banks in prior years, and in the first assessment against the Home savings bank for 1902 the same deduction was made. I did not make the second assessment for the express purpose of compelling the bank to pay taxes on the Government bonds. The city solicitor advised us to make the assessment on the shares of the corporation itself. I don't think he told me that if I made the assessment on the shares that thereby Government bonds would in effect be taxed. He told me that Government bonds helped make up the value of the shares of the bank. In previous years we recognized the fact that Government bonds were not assessable to savings banks and we did not assess them. I I did not always respect and allow the exemption provided by law in making assessment on other lines of property; sometimes we exempted a soldier's homestead and sometimes we didn't. While the law allows certain exemptions with respect to a soldier's homestead yet we allowed it if we thought a man was dependent and entitled to it; otherwise not.

In making the assessment against the Home savings bank we took the capital stock, $50,000.00, the surplus of $10,000.00 and the undivided profits of $5,595.00, making a total of $65,595.00; from that we deducted the value of the real estate $3,854.00, leaving $61,741.00 subject to taxation. I took it for granted that their shares must be worth that much money. If their capital stock was represented in whole, or in part, by bills receivable which were not good they would impair the value of the stock. I knew a large part of the assets of the bank were bills receivable, but I made no examination of the bills receivable, nor as to their value.

Testimony closed.

33 And thereupon this cause was submitted to the court and thereafter, and on November 23, 1903, the court entered of record in this cause the following:

Decree.

Now on this 23d day of November, 1903, being the September term of this court, this cause came on for hearing in regular order, the plaintiff appearing by its attorney, W. G. Harvison, and the defendants appearing by W. H. Bremner, city solicitor. After hearing the evidence and arguments of attorneys, and being fully advised in the premises, the court finds that the equities are with the defendants.

Therefore, be it ordered, adjudged and decreed that this appeal be and is hereby dismissed, and the costs of this action taxed to the plaintiff.

Appeal.

And thereafter, and on the 21st day of March, 1904, the plaintiff duly appealed from said decree to this court by serving notice of such appeal upon the attorneys for the defendants, and upon the clerk of the court below as by law provided, and by filing said notice with said clerk on said date.

Certificate.

The foregoing abstract contains all the pleadings, and the whole record in this cause including all the testimony and evidence offered on the trial thereof.

DALE & HARVISON,
Attorneys for Appellant.

34 Supreme Court of Iowa.

Errors Relied upon for a Reversal.

Thereafter, on the 29th day of September, A. D. 1904, there was filed in said court and cause, appellant's brief and argument, which, in compliance with rule 54, clause 4, of the rules of said supreme court of Iowa, set out the errors relied upon for a reversal, in said court, as follows, to wit :—

(1.) Section 1322 of the Code of Iowa, (1897), contravenes U. S. Revised Statute-, section 3701, and other statutes, exempting from taxation by any State, the bonds issued by the United States.

(2.) Section 1322 of the Code of Iowa, (A. D. 1897), contravenes the provisions of the Constitution of the United States article 1, section 8, clauses 1 and 2, conferring upon the United States the power to borrow money, etc.

(3.) Section 1322 of the Code of Iowa, (A. D. 1897), contravenes the provisions of the fourteenth (14th), amendment to the Constitution of the United States, concerning due process of law and equal protection of the laws, by assessing and taxing to the bank, corporate stock therein, which was the property of the individual stockholders; also without giving to the bank a right of recoupment for taxes so paid ; and without regard to the dividends or other property, if any, belonging to each said stockholder, and held by said bank.

Other Briefs Filed.

35 Thereafter, on the 28th day of October, A. D. 1904, there was filed in said court and cause, appellees' brief and argument. And on the 12th day of November A. D. 1904, there was filed in said court and cause, appellant's reply brief and argument.

Submission of the Cause.

And on the 22nd day of November, A. D. 1904, at the September A. D. 1904 term of said supreme court of Iowa, an order was duly made and entered of record in said court, for the submission of said cause as an equity cause triable *de novo* without assignments of error, upon the foregoing abstract of record, and the printed briefs and arguments of counsel, filed in said cause.

Opinion of the Supreme Court.

And on the 17th day of December, A. D. 1904, an opinion of said supreme court of Iowa, was handed down and filed in said cause, the same being in words and figures following, to wit:

In the Supreme Court of Iowa.

Filed Dec. 17th, 1904.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES ET AL., Appellees.
} Reported in 101 N. W. R. (Iowa), 867.

Appeal from District Court, Polk County—Hon. James A. Howe, Judge.

Appeal from the judgment of the district court affirming the action of the board of review of the city of Des Moines in refusing to deduct from the assessment of appellant banks upon its shares of stock the amount of Government bonds owned by *them*. Affirmed.

Per Curiam:

36 This court is fully committed to the doctrine that the general exemption from State taxation with which the bonds of the United States are clothed, does not entitle the bank to deduct the amount of such bonds from the value of the shares of *their* stock which are assessed to it for the purpose of taxation under Code section 1322.

German Savings Bank *vs.* Burlington, 118 Iowa 84.
National State Bank *vs.* Burlington, 119 Iowa 696.
First National Bank *vs.* Independence, 122 Iowa 482.

We are favored by an elaborate and able argument for appellants, insisting that such taxation cannot be upheld, especially as applying to savings banks, and that this position has the support of the Federal Supreme Court, whose holdings, in the last resort, must gov-

ern the rights of the parties. These propositions were presented quite fully in the cases above cited, and we are still satisfied with the conclusions there reached. Those cases have all been decided within such recent period that a rediscussion of the subject and of the bearing of the various precedents cited is not called for.

The judgment of the district court is affirmed.

37 Final Judgment.

On the 17th day of December A. D. 1904, in the record of the proceedings of said supreme court of Iowa is a judgment in said cause, in words and figures as follows, to-wit:

PEOPLES SAVINGS BANK, DES MOINES SAVINGS Bank, and Home Savings Bank, Appellants,
vs.
CITY OF DES MOINES and THE BOARD OF REview of said City, Appellees.
} Nos. 23525, 23593, and 23655.

Appeal from Polk District Court.

In this cause, the court being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly. It is further considered by the court that the appellants pay the costs of this appeal, taxed at $30.75 and that execution issue therefor.

(Signed) H. E. DEEMER,
Chief Justice.

38 Return to Writ of Error.

HOME SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNcil of said City as a Board of Review, Appellees.
} Return of Clerk of Supreme Court to Writ of Error.

THE UNITED STATES OF AMERICA,
State of Iowa,
} ss:

I, John C. Crockett, clerk of the supreme court of Iowa, in pursuance of the command of the writ of error in the above entitled cause, to which this certificate is attached, do hereby certify and return, that the above and foregoing is a true and correct transcript

of all of the record, the opinion and final judgment of this court in the above entitled case of The Home Savings Bank, appellant, now plaintiff in error, against The City of Des Moines, and the City Council of said City, as a Board of Review, appellees, now defendants in error, as full, true and complete as the same are now of record and on file in my office.

I further certify that the assignments of error, petition for allowance of the writ of error, bond, and the citation with the return of admission of service thereon endorsed, are each hereto attached in original form, true and correct copies of same being retained on file in this office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court at Des Moines, Iowa, this 18th day of July A. D. 1905.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.
H. L. BONSQUET, Deputy.

Endorsed on cover: File No. 19,852. Iowa supreme court. Term No. 350. Home Savings Bank, plaintiff in error, *vs.* The City of Des Moines and The City Council of said City as a Board of Review. Filed July 22d, 1905. File No. 19,852.